

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	Case No. 95-04044
JOHN and ISABLE SALINAS,)	
)	SUMMARY ORDER
Debtors.)	
_____)	

Before the Court for disposition is the Motion to Clarify Order (the “Motion”) filed in this Chapter 13 case by creditor Equifax Risk Management Services (“Equifax”). In the Motion, Equifax asks the Court to clarify the meaning and extent of an Order to Employer to Pay to the Trustee (the “Pay Order”) issued by this Court on May 15, 1997, to Debtor John Salinas’ employer, Lockheed Martin Idaho Technologies Company (“Lockheed”), directing said employer to pay to the Chapter 13 Trustee \$451.76 each month to fund Debtors’ confirmed Chapter 13 plan. Lockheed joins Equifax in seeking clarification of the order.

It seems that Equifax holds a state court judgment against Debtors for collection of a post-bankruptcy debt; that Equifax executed on Debtors’

wages at Lockheed to satisfy the debt; and that Lockheed declined to honor the state court execution relying upon language in this Court's Pay Order providing:

"IT IS FURTHER ORDERED, that no deduction for account of any garnishment, wage assignment, credit union, or other purpose not specifically authorized by this Court be made from the earnings of said Debtor."

Pay Order at 2. Thereafter, Equifax filed the present Motion. Debtors did not respond to the Motion or appear at the hearing on the Motion held on August 10, 1999.

The controlling law concerning the right of a post-petition judgment creditor to attach wages earned by a debtor attempting to complete payments under a confirmed Chapter 13 plan where the employer has been ordered to make payments to the Chapter 13 Trustee was summarized by this Court in *In re MacConkey*, 96.4 I.B.C.R. 152. Except where the Chapter 13 plan, or the Court's order confirming the plan, provides otherwise, a Chapter 13 debtor's earnings are not property of the bankruptcy estate, and revert in the debtor, upon confirmation of the plan. 11 U.S.C. § 1327(b). Under such circumstances, after confirmation the automatic stay does not protect those wages from attachment, because they are no longer estate property. 11 U.S.C. § 362(c)(1). However, as *MacConkey* explains, Section 1325(c), the Bankruptcy Code provision authorizing this Court to issue pay orders in Chapter 13 cases,

constitutes a separate, distinct prohibition on attachment of a Chapter 13 debtor's wages. While a Chapter 13 debtor's wages in excess of the plan payment may not constitute property of the bankruptcy estate and are not protected by the automatic stay, the restriction against attachment contained in the Pay Order quoted above is a valid one. In order to promote the policies of Chapter 13, and to prevent against unsupervised competition for a Chapter 13 debtors' wages, it is therefore not unreasonable to require the attaching creditor to come before this Court, upon appropriate motion and after notice to the debtors and Trustee, to secure the Court's authorization to proceed with its execution. In this fashion, both the debtor and Chapter 13 Trustee are informed of the existence of the attachment, and may be heard by the Court concerning the potential impact the attachment may have on the debtor's plan.

In this case, Debtors have not appeared to oppose Equifax's request to attach Debtors' wages over and above the monthly plan payment, nor has the Trustee provided the Court with good cause to further restrain the creditor's collection activities.

Accordingly, Equifax's Motion for Clarification is hereby **GRANTED** and the Court's Pay Order is hereby modified so as to allow Equifax to attach

Debtors' wages at Lockheed, solely to the extent of any excess of amounts previously ordered paid monthly to the Chapter 13 Trustee.

DATED This 12th day of August, 1999.

JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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CASE NO.: 95-04044

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED: August 12th, 1999

By _____
Deputy Clerk